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# *County of San Diego*

## **CITIZENS' LAW ENFORCEMENT REVIEW BOARD**

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### **REGULAR MEETING AGENDA**

### **TUESDAY, SEPTEMBER 14, 2010, 5:30 P.M.**

### **San Diego County Administration Center**

### **1600 Pacific Highway, Room 302/303, San Diego, 92101**

**The public portion of the meeting must be concluded in time to allow the public to vacate the building by 6:00 p.m.**

*(Free parking is available on the street or pay Ace Parking on the south side. Enter at the north entrance.)*

Pursuant to Government Code Section 54954.2 the Citizens' Law Enforcement Review Board will conduct a meeting at the above time and place for the purpose of transacting or discussing business as identified on this agenda. Complainants, subject officers, representatives or any member of the public wishing to address the Board on any of today's agenda items should submit a "Request to Speak" form to the Administrative Secretary prior to the commencement of the meeting.

#### **DISABLED ACCESS TO MEETING**

A request for a disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting. Any such request must be made to Ana Becker at (619) 238-6776 at least 24 hours before the meeting.

#### **1. ROLL CALL**

#### **2. MINUTES APPROVAL**

- a) Minutes of the July 2010 Regular Meeting (*Attachment A*)

#### **3. EXECUTIVE OFFICER'S REPORT**

- a) Workload Report - Open Complaints/Investigations Report (*Attachment B*)
- b) Staff / Board Member Training Opportunities

#### **4. NEW BUSINESS**

- a) Swearing in of new Review Board Members, Debra DePratti Gardner and Calixto J. Pena
- b) Walter F. Ekard, Chief Administrative Officer for the County of San Diego
- c) Introduction of Mark Watkins, CLERB Special Investigator
- d) Sheriff's Department Orientation, August 18, 2010
- e) CLERB Orientation, September 8, 2010
- f) 2010 NACOLE Annual Conference, September 20-23, 2010

*-continued on next page-*

## 5. UNFINISHED BUSINESS

- a) CLERB Rules and Regulations Update
- b) SDO Representative in Closed Session Meetings

## 6. PUBLIC COMMENTS

This is an opportunity for members of the public to address the Board on any subject matter that is within the Board's jurisdiction. Each speaker should complete and submit a "Request to Speak" form to the Administrative Secretary. Each speaker will be limited to three minutes.

## 7. CLOSED SESSION

- a) **Discussion & Consideration of Complaints & Reports:** Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session).

DEFINITION OF FINDINGS	
Sustained	The evidence supports the allegation and the act or conduct was not justified.
Not Sustained	There was <u>insufficient evidence</u> to either prove or disprove the allegation.
Action Justified	The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.
Unfounded	The evidence shows that the alleged act or conduct did not occur.
Summary Dismissal	The Review Board lacks jurisdiction or the complaint clearly lacks merit.

## CASES FOR SUMMARY HEARING (19)

### ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE

#### 09-068

#### Co-Complainant Trotter:

1. Misconduct/Procedure – Deputy 1 quarantined the complainant's module and inmates were not permitted to shower for over 96 hours.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year, therefore the Review Board lacks jurisdiction.

2. Misconduct/Procedure – Deputy 1 has denied pro-per inmates access to telephones, the legal library and/or weekly supplies.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Misconduct/Procedure – Deputy 1 failed to act upon and/or respond to an Inmate Grievance submitted by the complainant.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

Co-Complainant Phillips:

1. Misconduct/Procedure - Deputy 1 housed an inmate with swine flu with other inmates, jeopardizing their health and showing indifference to their well-being.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year, therefore the Review Board lacks jurisdiction.

2. Misconduct/Procedure – Deputy 1 quarantined inmates, resulting in schedule disruptions and cancellation of numerous inmate privileges.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Misconduct/Medical - Deputy 1 improperly administered Tamiflu to inmates.

Recommended Finding: Summary Dismissal

Rationale: See rationale #1.

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**09-070**

1. Misconduct/Procedure – Deputy 1 lost two bags of the complainant's property including legal paperwork and commissary items.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year, therefore the Review Board lacks jurisdiction.

2. Misconduct/Procedure – Deputy 1 defied a Minute Order and transferred the complainant from SDCJ to GBDF.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

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**09-077**

1. Excessive Force – Deputy 1 threw the complainant to the ground and put him in a chokehold even though the complainant was handcuffed in waist chains and did not resist the deputy

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year, therefore the Review Board lacks jurisdiction.

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## **09-081**

1. Discrimination/Racial - Deputy 1 and/or Deputy 3 did not write a crime report/arrest an apartment manager for contributing to the delinquency of the complainant's 16-year-old disabled daughter (asking daughter to drink and smoke with her), because the complainant and her daughter are black

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year, therefore the Review Board lacks jurisdiction.

2. Misconduct/Procedure - Deputy 2 did not arrest the apartment manager on a charge of sexual battery, even though the complainant's 16-year-old daughter said the manager touched the 16-year-old's breast.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

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## **09-082**

1. Discrimination/Racial - Deputy 4 improperly classified/housed the complainant, who is a black South African, with other black inmates.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year, therefore the Review Board lacks jurisdiction.

2. Misconduct/Medical – Deputy 4 gave the complainant expired medication.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Misconduct/Procedure - Deputy 4 failed to obtain an appointment with a chaplain as promised.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

4. Misconduct/Procedure – Deputy 4 addressed the complainant's requests for Kosher meals but pork-free meals have been not been provided.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

5. Misconduct/Procedure - Deputy 1 stopped/refused to take the complainant's legal mail.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

6. Misconduct/Procedure - Deputy 3 told the complainant that his grievances would not be answered.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

7. Misconduct/Discourtesy - Deputy 2 approached the complainant “like a taunting little kid...poking” at him.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

8. Discrimination/Religious – Deputy 4 refused the complainant’s repeated requests to receive a pork-free diet in observance of the complainant’s Islamic beliefs.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

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#### **09-084**

1. Death Investigation/Pursuit – Deputies 1-4 engaged in pursuit of a stolen vehicle that fled for approximately one-quarter of a mile before crashing and killing passenger Ceja.

Recommended Finding: Action Justified.

Rationale: The decedent was an unrestrained passenger in a stolen vehicle fleeing from law enforcement. Deputies 1, 2, 3, and 4 acted appropriately and within policy, procedure, and the law when they attempted to stop two suspects that reportedly broke into a vehicle and fled the scene in a reported stolen vehicle. The driver of the stolen vehicle sped away without regard for his own or anyone else’s safety before losing control, crashing into a tree, and plunging into a concrete drainage ditch. The driver was booked into custody for vehicle burglary, possession of stolen property (recovered at the scene, along with a loaded handgun on the deceased), felony evading, conspiracy, driving under the influence resulting in death, and vehicular manslaughter.

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#### **09-086**

1. Misconduct/Medical – Deputy 1 was unable to properly care for the complainant’s medical needs due to budget constraints.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers’ Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year, therefore the Review Board lacks jurisdiction.

2. Misconduct/Procedure – Deputy 1 refused to take the complainant to medical after he collapsed and yelled “Man Down!”

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

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#### **09-090**

1. Discrimination/Other – Deputy 2 contracts with a telephone company that “gouges” inmates and is unaccountable for errors.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year, therefore the Review Board lacks jurisdiction.

2. Criminal Conduct – Deputy 2 steals or enables theft of minutes on inmate telephone accounts.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Misconduct/Discourtesy – Deputy 1 told the complainant to “deal with it” after he complained of being victimized by theft.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

4. Misconduct/Procedure – Deputy 2 refused to sign the complainant's Inmate Grievance submitted on July 31, 2009.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

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## **09-092**

1. Discrimination/Racial Profiling – Deputy 3 racially profiled the complainant.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year, therefore the Review Board lacks jurisdiction.

2. False Arrest – Deputy 3 falsely arrested the complainant.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Misconduct/Harassment – Deputy 3 “harassed” the complainant.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

4. Misconduct/Procedure – Deputy 3 failed to advise the complainant of his rights.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

5. Misconduct/Procedure – Deputy 2 accused the complainant of being a gang member.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

6. Discrimination/Racial – Deputy 1 called the complainant a “nigger.”

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

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#### **09-094**

1. Misconduct/Procedure – Deputy 1 confiscated the complainant’s property without providing a receipt to her.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers’ Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year, therefore the Review Board lacks jurisdiction.

2. Misconduct/Procedure – Deputy 1 refused to release the complainant’s property without a court order and would not assist her in obtaining it.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

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#### **09-097**

1. Excessive Force – Deputies 1 and 2 repeatedly tasered, hit and kicked the aggrieved.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers’ Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year, therefore the Review Board lacks jurisdiction.

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#### **09-102**

1. Excessive Force – Deputy 1 assaulted the complainant by slamming his head into a concrete pillar.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers’ Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year, therefore the Review Board lacks jurisdiction.

2. Misconduct/Procedure – Deputy 1 refused the complainant medical assistance upon request.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Misconduct/Procedure – Deputy 1 terminated the complainant’s family visit prematurely.

Recommended Finding: Summary Dismissal

**09-106**

1. Discrimination/Racial - Probation Officer 1 took disciplinary action against the aggrieved (prevented him from attending school) because he is black.

Recommended Finding: Action Justified

Rationale: On September 17, 2009, the aggrieved and nine other Hispanic and African American detainees were involved in a fight while attending a daily Second Chance program. All of the detainees involved were given the same discipline, irrespective of their race. The sanction for this major misbehavior was consistent with Departmental Policies and Procedures, and was applied equally to the Hispanic detainees and the African American detainees, with no evidence of any discriminatory influences impacting this decision. The action was lawful, justified and proper.

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**09-111**

1. Misconduct/Procedure – P.O. 2 failed to adequately monitor a probationer, as evidenced by multiple victims harmed from 2005-2008.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year, therefore the Review Board lacks jurisdiction.

2. Misconduct/Discourtesy – P.O. 1 was “abrupt and curt” during a telephone conversation with the complainant on July 14, 2009.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Misconduct/Procedure – P.O. 1 failed to gather and obtain information and/or use victim testimony related to a probationer for a pre-sentencing report on July 20, 2009.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

4. False Reporting – P.O. 1 reported false information to the Court on July 20, 2009.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

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**09-121**

1. Illegal Search & Seizure - Deputy 1 stopped the complainant and turned him over to a California Highway Patrol officer, who arrested the complainant for DUI and driving on a suspended license.

Recommended Finding: Summary Dismissal

Rationale: On November 12, 2009, the complainant submitted a signed complaint concerning an incident that occurred on October 8, 2008. There is no exception that applies to this event for not responding within one-year

of the date of the incident giving rise to the complaint. Four medical treatment facilities, provided by the complainant, were contacted to determine if the complainant had been hospitalized rendering him physically incapacitated to submit his complaint within the one year limitations. None of the four facilities contacted had a record of hospitalization. CLERB does not have authority to investigate this complaint based upon CLERB Rules & Regulations, 4.4 Citizen Complaints: Jurisdiction.

2. Misconduct/Truthfulness - Deputy 1 lied to the CHP officer in stating that the complainant did not use his right turn signal.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Misconduct/Truthfulness - Deputy 1 lied to the CHP officer in stating that the complainant drove improperly.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

4. Criminal Conduct - Deputy 1 told the complainant he would let him go but instead looked in his trunk and stole the complainant's medications and Bible containing \$800-\$900 in cash, telling him it was "evidence."

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

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## **09-126**

1. Misconduct/Discourtesy – Deputy 1 said to court defendants, "That's why you're all here, you can't follow instructions."

Recommended Finding: Sustained

Rationale: Deputy 1 was in violation of Sheriff's Policy & Procedure 2.22, Courtesy. The comment made by a bailiff to a group of citizens awaiting traffic court, was a form of insolence. The investigation supports the finding and the conduct was not justified.

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## **10-028**

1. Death Investigation/Inmate Suicide – Deputies 1, 2, and 3 found Inmate Lisowski lying unresponsive in his assigned bunk.

Recommended Finding: Action Justified

Rationale: Deputies responded to the call of "Man Down" by inmates and discovered Lisowski unresponsive and without a pulse. Resuscitative efforts were initiated and performed until death was pronounced. The cause of death was attributed to an overdose of prescription medication, and the manner of death was classified as suicide. The evidence shows the deputies' conduct was lawful, justified and proper.

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## **10-070**

1. Misconduct/Intimidation – Deputy 6 called Karen Wilson "The Street Preacher" and ordered her to leave the City of Vista immediately.

Recommended Finding: Summary Dismissal

Rationale: On August 6, 2010, the complainant submitted a signed complaint concerning an incident that occurred on May 20, 2009. The complainant had prior contacts with CLERB in 2004 and 2009, and there is no

exception that applies to this event for not responding within one-year of the date of the incident giving rise to the complaint. CLERB does not have authority to investigate this complaint based upon CLERB Rules & Regulations, 4.4 Citizen Complaints: Jurisdiction.

2. Excessive Force – Deputies 1, 4 and/or 5 beat Jordan Wilson.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

3. False Arrest – Deputy 4 falsely arrested Jordan Wilson.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

4. False Reporting – Deputy 5’s report concerning this incident was not accurate.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

5. Misconduct/Truthfulness – Deputies 1, 2, 3, 4 and/or 5 were untruthful to the Court about this incident.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

6. Misconduct/Discourtesy – Deputy 6 used “expletives” during this incident.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

7. Misconduct/Procedure – Deputy 6 “rejected” a complaint concerning this incident.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

8. Misconduct/Harassment – Deputy 6 has harassed Karen and Jordan Wilson for years.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

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## **10-078**

1. Misconduct/Procedure – Deputy 1 refused to accept, threw the complainant’s legal documents on the ground, and subsequently stated she would throw them in the trash.

Recommended Finding: Summary Dismissal

Rationale: The personnel involved was determined to be a non-sworn member of the Sheriff’s Department over whom CLERB has no authority. The Review Board lacks jurisdiction based upon CLERB Rules & Regulations, 4.1 Citizen Complaints: Authority.